IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6550 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IQBAL ALIAS BAPU SAIYED HUSEN

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

Mr.D.N.Patel, Ld.AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

The detenu being aggrieved by an order passed by the Commissioner of Police, Ahmedabad City, respondent no.1 herein has moved this Court. The respondent no.1 herein passed an order vide Annexure A on 1.6.99 detaining the detenu under the provisions contained in the Gujarat Prevention of Anti-social Activities Act,

1985 ("PASA" for short).

2. The grounds of detention were served on the detenu vide Annexure `C' dated 1.6.99. The detenu was booked for offences punishable under Section 120(B), 324, 506(2) of the I.P.C. and Section 135(1) of B.P.M.C. Act twice on 23.1.1999. The Detaining Authority was satisfied that the detenu is in habit of administering threats to innocent persons and is also in habit of extorting money by showing dangerous weapons, as a result of which the people who are law abiding citizens are feeling insecure. The incident dated 2.5.99 and 10.5.99 are mentioned in the grounds of detention. Reading the same, it appears that the detenu is a dangerous person and is in habit of using weapon and on account of his activities, people are not safe in the locality. In the instant case, it is not necessary to examine the legality of the detention as continued detention of the detenu is bad, in as much as, the representation submitted by the detenu has not been disposed of by the State Government in accordance with law. Ground No.23 reads as under:-

> "23. That the petitioner had made a written representation dated 24.6.99 to the Advisory Board, Commissioner of Police, Ahmedabad City and Deputy Secretary to Government of Gujarat, Home department but the same is not expeditiously considered and disposed of and disposing of the written representation of the detenu - the petitioner under Article 22(5) is infracted and hence the detention of the petitioner is vitiated and the continuous detention of the petitioner is required to be quashed and set aside."

Though, the Detaining Authority has filed an affidavit but the State Government has not filed an affidavit throwing light about the aspect of representation. Therefore, it is not possible for the Court to come to a conclusion whether representation has been decided in accordance with law or not. Suffice it to say the detenu is in detention since June, 1999 but till this date the affidavit has not been filed and in view of this situation, the continued detention is required to be held as bad and illegal. The detenu is ordered to be released forthwith, if not required in any other case. Rule made absolute with no orders as to costs.

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